

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

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| In the Matter of               | ) |                     |
|                                | ) |                     |
| Amendment of Part 1 of the     | ) | WT Docket No. 97-82 |
| Commission's Rules --          | ) |                     |
| Competitive Bidding Proceeding | ) |                     |

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these comments to the Notice of Proposed Rulemaking ("NPRM"), in the above proceeding, FCC 97-82, released February 28, 1997.

NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural and small-town America. NTCA members are typically small carriers that serve no more than 50,000 access lines. All of NTCA's members are included in the definition of a "rural telephone company," as defined by the Telecommunications Act of 1996.<sup>1</sup>

DISCUSSION

I. THE COMMISSION CANNOT WRITE RURAL TELEPHONE COMPANIES OUT OF SECTION 309(j).

In the NPRM, the Commission proposes to move away from its current "service-specific" auction rules and adopt "general" competitive bidding rules that will apply to all auctionable

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-1-4, 110 Stat. 56 to be codified at 47 U.S.C. §§ 151 *et. seq.*

services.<sup>2</sup> NTCA agrees that uniform rules benefit the public. Small companies, in particular, benefit from simple procedures as well as consistent policies and rules. Complicated rules and shifting policies impose costly burdens on the companies and the public. To the extent that the proposed changes will reduce unnecessary costs and speed service delivery to the public, NTCA supports them.

The Commission proposes to continue its practice of soliciting comment in service-specific rule making proceedings on the appropriate small business size standard for each auctionable service. However, it proposes to adopt a few uniform rules to govern the participation of designated entities. The proposals include a single definition of gross revenues, adoption of a fixed schedule of bidding credits based on average annual gross revenues, a uniform approach to financial size attribution for all auctionable services and a single definition of “rural telephone company.”<sup>3</sup>

NTCA agrees with the proposal to adopt the definition contained in the Telecommunications Act of 1996 as the single definition of a rural telephone company to be used in all auctionable services. The 1996 Telecom Act definition is consistent with the purposes of Section 309 (j) of the Communications Act. Adoption of the definition will also promote administrative efficiency and benefit the public. However, the Commission must do more than establish a single definition of a “rural telephone company” to accomplish the purposes in Section 309(j). The proposal to establish a uniform schedule of bidding credits for entities on the basis of annual gross revenues is not enough. The Commission should also include in its rules

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<sup>2</sup> NPRM, ¶ 18.

<sup>3</sup> NPRM, ¶ 20.

provisions that define the bidding credits that will apply across the board to rural telephone companies. Similarly, if the Commission establishes uniform rules providing for installment payments for small businesses and other designated entities, it should include specific schedules for rural telephone companies.

The Commission cannot just define what a rural telephone company is and then proceed to write rural telephone companies out of Section 309(j) by not making provisions for the companies in general rules that will apply to all future auctions. Section 309(j) of the Communications Act requires the Commission to formulate competitive bidding rules that (1) promote economic opportunity for rural telephone companies and other designated entities,<sup>4</sup> and (2) foster the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. . .<sup>5</sup> Unfortunately, the Commission can eliminate the possibility of any future preferential treatment of rural telephone companies by limiting its general preference rules to “small businesses.” Section 309(j) requires that the Commission consider and create opportunities for rural telephone companies regardless of their qualification as a “small business.” Rural telephone companies should not be singled out as the one group that must meet a separate burden each time an auction is held.

## **II. THE COMMISSION MUST CONSIDER ALTERNATIVES THAT MINIMIZE THE IMPACT OF ITS RULES ON SMALL INCUMBENT LECs.**

In its Initial Regulatory Flexibility Analysis (“IRFA”), the Commission states that it will consider small incumbent LECs within its analysis and use the term to refer to any incumbent

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<sup>4</sup> Subsection 309 (j)(3)(B) of the Communications Act.

<sup>5</sup> Subsection 309 (j)(3)(A) of the Communications Act.

LEC that arguably might be defined by the SBA as a “small business concern.” Under the SBA’s definitions, all of NTCA’s members are small business concerns whose economic interests may be adversely and significantly impacted by rules that fail to implement Congress’ intent. None of NTCA’s members come anywhere near the 1,500 employee threshold defining a “small business concern.”

The alternative that NTCA<sup>6</sup> proposes in this proceeding is a general rule providing for bidding credits and installment plans for rural telephone companies. Because the Commission proposes no provisions to promote opportunities for rural telephone companies, they will be harmed unless the Commission follows the directive in Section 309(j). It should therefore consider the alternative NTCA proposes, both to comply with Section 309(j) and to fulfill the requirements of the Regulatory Flexibility Act. The mere acknowledgment that some rural telephone companies may fit the SBA definition of a “small business concern” is an empty exercise unless the Commission actually considers alternatives that minimize the significant adverse economic impact that may result from adoption of proposals which totally ignore a Congressional mandate to create economic opportunities for rural telephone companies.

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<sup>6</sup> 13 C.F.R. § 121.201, SIC Code 4813.


## CONCLUSION

For the above stated reasons, NTCA urges the Commission to adopt general rules which specifically provide for bidding credits and other preferences for rural telephone companies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 97-82 was served on this 27th day of March 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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